SUPREME COURT, U. S.

FILED

MAY 23

In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-1362

WILLIAM JACOB JOHNSON,
Petitioner,

v.

COMMITTEE ON EXAMINATIONS AND ADMISSIONS OF THE SUPREME COURT OF ARIZONA,
Respondent.

Brief in Opposition to Petition for a Writ of Certiorari to the Supreme Court of Arizona

DONALD FREDERICK DAUGHTON
DAUGHTON FEINSTEIN & WILSON
1840 First National Bank Plaza
100 West Washington
Phoenix, Arizona 85003
Counsel for Respondent

BORG PRINTING COMPANY OF CALIFORNIA, 346 FIRST STREET, SAN FRANCISCO 94105

In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-1362

WILLIAM JACOB JOHNSON,
Petitioner,

v.

COMMITTEE ON EXAMINATIONS AND ADMISSIONS OF THE SUPREME COURT OF ARIZONA,
Respondent.

Brief in Opposition to Petition for a Writ of Certiorari to the Supreme Court of Arizona

JURISDICTION

The Committee on Examinations and Admissions of the Supreme Court of Arizona (Committee) is not a proper party to this Petition. Its function is to examine applicants and recommend to the Arizona Supreme Court for admission to practice those applicants who are considered by the Committee to have the necessary qualifications and to fulfill the requirements prescribed by the rules of the Board or Governors as approved by the Arizona Supreme Court

respecting examinations and admissions. The Supreme Court of the State of Arizona has the ultimate responsibility for the admission to the practice of law or the disbarment of a person licensed to practice law. *In re Sullivan,* 64 Ariz. 337, 170 P.2d 614 (1946); *In re Lewkowitz,* 70 Ariz. 325, 220 P.2d 229 (1950); *Application of Levine,* 97 Ariz. 88, 397 P.2d 205 (1965) and Rule 28(a), Rules of the Supreme Court of Arizona.

QUESTIONS PRESENTED

1. Has Petitioner adequately demonstrated that he possesses sufficient knowledge of the law in the Bar examination papers written by him in either July 1970, February 1971 or July 1971 to be entitled to be licensed to practice law in the State of Arizona?

2. Has Petitioner demonstrated that any conduct on the part of the Committee on Examinations and Admissions of the Supreme Court of Arizona has in anyway resulted in any prejudice to the grading of the examination papers written by him in the Bar examinations administered by the Committee in either July 1970, February 1971 or July 1971?

STATUTE AND RULES INVOLVED

Rule 28(a) of the Rules of the Supreme Court of the State of Arizona provides in applicable part:

> "The examination and admission of applicants for membership in the State Bar of Arizona shall conform to this Rule. For such purpose, a committee on examinations and admissions consisting of seven active members of the state bar shall be appointed by this court upon the recommendation of the board of governors of the state bar which shall recommend at least three members of the state bar for each appointment to be made. . . . The committee shall examine applicants and recommend to this court for admission to practice applicants who are found by the committee to have the

necessary qualifications and to fulfill the requirements prescribed by the rules of the board of governors as approved by this court respecting examinations and admissions heretofore adopted and made effective May 25, 1948, and as amended effective February 1, 1954, and such other rules as hereafter may be adopted. The court will then consider the recommendations and either grant or deny admission. Amended, effective Sept. 15, 1970."

Rule 28(c)XII E in applicable part pertains to "Proceedings Upon Failure To Receive Satisfactory Grade." All of Rule 28(a) and the pertinent portion of Rule 28(c)XII E is printed in full as Appendix A attached.

STATEMENT

Petitioner has on three occasions failed the Bar examination administered by the Committee on Examinations and Admissions of the Supreme Court of Arizona. These examinations were conducted in July 1970, February 1971 and July 1971. After being advised by the Committee that he had failed to receive a passing grade in the February 1971 examination, Petitioner proposed a rule change for the computation of grades and submitted the proposal to the Chairman of the Committee. The Chairman responded advising Petitioner that the procedure recommended by him for recognizing the higher grade per subject on two consecutive examinations was not within the rules as promulgated by the Arizona Supreme Court and that the Committee was without power to change those rules (Exhibit 3 to Petition dated April 19, 1971 in the Supreme Court of the State of Arizona Cause No. 10484). Petitioner then filed a Petition in the Supreme Court of the State of Arizona asking that he be admitted on the basis of recognizing the higher grade per subject on the two consecutive examina-

tions which he had then taken. The Committee responded to this Petition by simply stating that its authority was that which was delegated to it by the court, and it would be an excess of that authority if it followed the procedure recommended by Petitioner. The Supreme Court of Arizona denied that Petition on May 11, 1971 (Order dated May 12, 1971, Supreme Court of the State of Arizona in Cause No. 10484). In July 1971, Petitioner again wrote the Bar examination and again failed to receive a passing score. Only after this third failure did Petition seek a review of his examination papers in accordance with Rule 28(c)XII of the Rules of the Supreme Court of Arizona (Exhibit 6 to original Petition filed In The Matter of the Application of William Jacob Johnson To Be Admitted as a Member of the State Bar of Arizona No. SB-10 in the Supreme Court of the State of Arizona).

ARGUMENT

Petitioner in his Petition for Writ of Certiorari relies in large part upon testimony given before a Master appointed by the Supreme Court of Arizona in connection with the application of Charles S. Murry to be admitted as a member of the State Bar of Arizona. In this regard, it should be understood that Charles S. Murry has taken the Bar examination administered by the Committee on the same three occasions as Petitioner, i.e., July 1970, February 1971 and July 1971, and has on each occasion failed to receive a satisfactory grade and has not been admitted as a member of the State Bar of Arizona. The hearing before the Master appointed by the Supreme Court of Arizona resulted from Mr. Murry's charges of arbitrariness, capriciousness and discrimination in the grading of his examination written in February 1971 (Petition for Review of Examination Papers filed July 11, 1971 in Cause No. 10563

in the Supreme Court of the State of Arizona and formal Order of Supreme Court, State of Arizona, dated July 13, 1971 in Cause No. 10563). Murry's Petition was denied by the Arizona Supreme Court on September 29, 1971. Respondent respectfully requests this court take judicial notice of Cause No. CIV. 71-692 Phx. in the United States District Court for the District of Arizona entitled *Charles S. Murry, Plaintiff, v. The Supreme Court, State of Arizona, Mark Wilmer, George Read Carlock, William E. Kimble, David K. Wolfe, Robert D. Myers, H. J. Wolfinger and James L. Richmond, Members of the Committee on Examinations and Admissions to the State Bar of Arizona, Defendants,* wherein Mr. Murry sought $365,000.00 in damages in addition to a court order directing his admission as a member of the State Bar of Arizona, which action was dismissed with prejudice for lack of jurisdiction on March 16, 1972 by William P. Copple, United States District Judge.

Petitioner has quoted out of context certain statements from the testimony of a member of the Committee given during a full day's hearing before Thomas Tang, Esq. sitting as Special Master In The Matter of the Application of Charles S. Murry To Be Admitted as a Member of the State Bar of the State of Arizona in Cause No. 10563 in the Supreme Court of the State of Arizona (Reporter's Transcript of Proceedings). A review of the entire 208-page transcript establishes beyond question that it is the policy and practice of respondent to administer fairly and impartially to all applicants Bar examinations conducted in accordance with the rules prescribed by the Supreme Court of Arizona. There is not one shred of evidence contained anywhere in the record transmitted to this Court to establish or even suggest that Petitioner's examination papers were graded down or that he was given any grade other than the answers written by him deserved. Without

such a showing, it is obvious that his claim of discrimination is unfounded.

Petitioner claims at page 14 of his Petition that Rule 28(c)XII E could conceivably prevent an applicant from receiving a review of his examination papers by less than a majority vote. However, he admits at page 5 of his Petition that only once did he formally petition the Committee for a review of his examination papers and, in fact, his examination papers were reviewed by the Committee. It is obvious, therefore, that he has suffered no prejudice as a result of Rule 28(c)XII.

CONCLUSION

It is respectfully submitted that Petitioner's complaints are not well founded, that he has no evidence of prejudicial conduct in the grading of his examination papers and that his Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

DONALD FREDERICK DAUGHTON
DAUGHTON FEINSTEIN & WILSON
1840 First National Bank Plaza
100 West Washington
Phoenix, Arizona 85003
Counsel for Respondent

(Appendix A Follows)

Appendix A

Rule 28(a) of the Rules of the Supreme Court of Arizona

Rule 28. EXAMINATION AND ADMISSION

Rule 28(a) Committee on examinations and admissions; powers and duties.

The examination and admission of applicants for membership in the State Bar of Arizona shall conform to this Rule. For such purpose, a committee on examinations and admissions consisting of seven active members of the state bar shall be appointed by this court upon the recommendation of the board of governors of the state bar which shall recomment at least three members of the state bar for each appointment to be made. Upon the effective date of the amendment of this rule, the court shall make appointments to the committee on examinations and admissions as follows: That person most recently appointed to the committee shall be reappointed for a term of four years and in order of inverse seniority on the committee, the next three existing members shall be reappointed for terms of three years, two years and one year, respectively, and three new members shall be appointed, one for a term of seven years, one for a term of six years and one for a term of five years. Thereafter, upon the expiration of a member's term, the court shall appoint a new member to serve for a term of seven years. In the event of a resignation or inability of a committee member to serve, the court shall appoint another person to serve the unexpired term. The committee shall examine applicants and recommend to this court for admission to practice applicants who are found by the committee to have the necessary qualifications and to fulfill the requirements prescribed by the rules of the board of governors as approved by this court respecting examinations and admissions heretofore adopted and made effective May 25, 1948, and as amended effective February 1, 1954, and

such other rules as hereafter may be adopted. The court will then consider the recommendations and either grant or deny admission. Amended, effective Sept. 15, 1970.

Applicable portion of Rule 28(c)XII E of the Rules of the Supreme Court of Arizona

RULES OF THE SUPREME COURT
Rule 28(c) XII E

Proceedings Upon Failure To Receive Satisfactory Grade

An applicant aggrieved by the failure of the Committee to award said applicant a satisfactory grade upon an examination may proceed as follows:

Such applicant shall within 20 days after results of such examination have been announced file a petition with the Committee styled as hereinbefore provided for other proceedings before the Committee entitled "Petition for Review of Examination Papers of Applicant."

Said application shall be verified by the applicant personally and shall specifically enumerate the questions and answers claimed to have been unfairly graded and the particulars wherein it is claimed the grade awarded by the Committee is unjustified by the merits of the answer. No general claim of unfairness will be entertained by the Committee and any such application which does not particularize and specify the exact and complete particulars of the claimed improper and unfair grading shall be dismissed summarily.

Applicant shall also state under oath that such applicant has reviewed all of the other questions and answers in the entire examination written by said applicant and that judged by the same standards applied in grading the other questions and answers of the applicant, the grade awarded

was unfair and did not reasonably represent the credit to which applicant was entitled for the answers to the questions so specified as unfairly graded.

Upon receipt of such application the Committee shall informally review the same and make such review of the applicant's examination papers as the Committee believes to be necessary in order to properly evaluate the fairness of the grades awarded such applicant of which complaint is made. The Committee need not convene as a body for the purpose of such review. If at least three members of the Committee concur in finding that the answers to the questions were not unfairly graded, the Committee shall so advise the applicant and no further review of the examinations papers of such applicant shall be required of the Committee. In the event, however, that two members of the Committee are of the opinion that the papers of the applicant were or may have been unfairly graded, such members shall so state in writing with their reasons for such opinion, which reasons shall be made a part of the review proceeding. If two members of the Committee shall so dissent in writing from the majority decision the applicant may file a petition with this Court for a review of the entire examination of said applicant and this Court shall in its discretion either grant or refuse such review. No such review shall be granted unless the reasons for dissent of two members are stated in writing. Such review if granted shall be based upon the record as made before the Committee and no further proceedings shall be had before this Court except as specifically ordered by this Court.

In the event the Committee by vote of the majority of its members finds the examination was unfairly or improperly graded and that if properly and fairly graded in accordance with the standard used by the Committee in grading the examination generally that such applicant should have been awarded a satisfactory grade, the Committee shall thereupon certify the applicant to this Court with the recommendation that such applicant be admitted to practice in the same manner as if the applicant had been given a satisfactory grade upon the examination.